

Workforce and Labor Issue Paper

FOREST WORKER ISSUES ARE FOREST HEALTH ISSUES.

Restoring our public lands and revitalizing adjacent rural communities – priorities emphasized in the Healthy Forest Restoration Act, the National Fire Plan, stewardship contracting, and other initiatives – depend on quality work implemented on-the-ground and quality jobs for those that perform the work. To have a well-trained workforce with the capacity to perform the high-value work needed to restore and maintain our public lands requires that fair wages, durable employment, a diversity of jobs, training opportunities, and safe work environments be offered. Current economic opportunities for rural community-based and mobile forest workers do not reflect this condition, indicating that the contracting system needs improvement.

Worker Issues: Procurement Methods Inadvertently Contribute to an Underclass Workforce

The primary way that restoration work is performed on national forest and other public lands is through service and, increasingly, stewardship contracts. The federal government awards these restoration contracts to businesses and contractors that, in turn, hire workers to undertake activities. Forest workers come from a variety of ethnic backgrounds and include U.S. citizens, legal permanent residents, H2B guest workers, and those without permission to work.

Recent news articles and academic research make clear that many of these forest workers, including firefighters, stream restorationists, tree planters, and thinners, face dangerous conditions, erratic employment, low wages, exploitation, and inadequate training. In 2003, for example, the median wage among forest workers in Oregon was \$11.97 per hour but half the workforce earned less than \$4,355 annually. More than 85% earned less than the federal poverty level for a family of four.¹

¹ In 2003, the federal poverty rate for a family of four that included two children was \$18,660. Ecosystem Workforce Program, Working Paper # 10, *Job Quality in Logging and Forestry Services in Oregon*, forthcoming.

SUMMARY OF SOLUTIONS

1. **Enforce labor laws**, particularly the Service Contract Act, by actively involving inspectors, contract officers representatives, and contracting officers in labor law compliance. Provide staff with direction and training to ensure that they understand their roles, responsibilities, and what is expected of them.
2. **Make full use of best value contracting** opportunities to reward contractors that perform high quality work, treat workers well, train workers, and provide rural community benefit. Monitor the use of best value contracting to track progress towards these ends.
3. **Create performance measures** that focus on outcomes, such the quality of ecosystem improvements and economic opportunities rather than on “acres treated” and other outputs. This will help to reduce the pressure to accept below costs bids and increase incentives to investigate and report potential labor-law violations.
4. Structure procurement contracts to **package contracts for long duration employment**—multiple months or seasons—and multi-skill sets; focus on creating contracts that provide business and employment for fewer workers over longer periods of time.
5. **Provide training opportunities** through existing contractors by allowing contractors to incorporate training costs into their price offer and reward contractors who do so through the best-value contracting process. Use agreements authorities with community organizations, community colleges, and others to create training partnerships.

COALITION PARTNERS:

ALLIANCE OF FOREST WORKERS AND HARVESTERS • ALLIANCE FOR SUSTAINABLE JOBS AND THE ENVIRONMENT • AMERICAN FORESTS • APPLIGATE RIVER WATERSHED COUNCIL • CENTER FOR BIOLOGICAL DIVERSITY • CENTRAL OREGON INTERGOVERNMENTAL COUNCIL • COLLABORATIVE LEARNING CIRCLE • CONSERVATION NORTHWEST • ECOSYSTEM WORKFORCE PROGRAM • FOREVERGREEN FORESTRY • FRAMING OUR COMMUNITY • GIFFORD PINCHOT TASK FORCE • JEFFERSON SUSTAINABLE DEVELOPMENT INITIATIVE • LAKE COUNTY RESOURCES INITIATIVE • LOMAKATSI RESTORATION PROJECT • MADRONE ENTERPRISES • NORTHWEST CONNECTIONS • NORTHEAST WASHINGTON FORESTRY COALITION • OREGON TROUT • PINCHOT PARTNERSHIP • RESOURCE INNOVATIONS • SALMON VALLEY STEWARDSHIP • SBS WOOD SHAVINGS • SUSTAINABLE NORTHWEST • SWAN ECOSYSTEM CENTER • WALLOWA RESOURCES • WATERSHED RESEARCH AND TRAINING CENTER • WILDLANDS CPR

Although there are excellent contractors working for the federal government, others forge worker fire qualification documents (red cards), fail to pay their workers legally-mandated wages or overtime, and do not supply safe vehicles or provide medical care when injured on the job. These working conditions harm workers, contractors, rural communities, and national forest ecosystems.

Current System: Focus on Efficiency Promotes “A Race to the Bottom” for Workers and Contractors

Numerous laws are designed to protect forest workers. They are often ineffective, however, because of the ways in which the Forest Service and other federal land management agencies structure and award contracts and oversee project implementation. Facing budget constraints, output-based performance measures, and a culture of efficiency that encourages minimizing administrative costs and contract prices, the agencies are forced into a system that rewards contractors who cut corners to offer the lowest bids – sometimes to the detriment of forest and community health objectives. To reduce costs on contracts that involve significant physical labor, contractors will often increase worker speed and reduce worker pay. This often means limiting training, paying unfair wages, and disregarding safety precautions.

Although low-price contracting might appear to save the government money, in reality it costs the American taxpayer more money when poor quality work has to be redone, and when poorly-paid workers have to apply for food stamps and other public assistance, or seek medical care without insurance.

There Are Solutions: Reduce the Need for Enforcement by Changing the Procurement System

Rather than a system that creates and maintains an underclass industry and encourages low-value work, we need a contracting system that creates quality jobs – jobs that pay fair wages and benefits, last over multiple seasons and years, ensure worker safety, provide training opportunities, and reward skilled workers for their work. We need a system that supports small businesses and workers located in public lands communities, as well as the mobile workforce, and that maintains local and rural workforce capacity for watershed restoration and forest management over the long-term.

We believe that such a system cannot be created through law enforcement alone. It will require changing how the agencies: (1) offer contracts, (2) award contracts, and (3) create accountability, and (4) build a new system for this work.

PROBLEMS AND SOLUTIONS EXPLAINED

1. Offering Contracts

• Contract Structure

The Forest Service has long had the tendency to offer service contracts, including indefinite delivery, indefinite quantity (IDIQ) contracts that require a large number of workers over a short period of time. This approach to contract structure runs counter to the need for longer-term, sustained employment and can also put small contractors at a competitive disadvantage.

We encourage the Forest Service to package a variety of related projects across a season of work in a given locale to create longer-term work opportunities for small and micro businesses and workers. During the 1990s, the Willamette Province Workforce Partnership was successful in creating such an effort for the Willamette National Forest and the Bureau of Land Management’s Eugene and Salem Districts.²

• Worker Training

The Forest Service and other federal land management agencies provide significant internal training to ensure that staff performs high quality work, but there are few mechanisms built in to ensure that contractors and their workers are also held to this high standard. Given that these agencies are becoming increasingly dependent on contract

SHORT-TERM SOLUTIONS FOR CONGRESS

1. Direct the Forest Service and BLM to End the practice of awarding contracts at prices that are lower than 20 % below the government estimate.
2. Strengthen wage reporting requirements under the Service Contract Act.

SHORT-TERM SOLUTIONS FOR FEDERAL LAND MANAGEMENT AGENCIES

1. Under executive sponsorship, convene a group of workers, contractors, and non-profit organizations and agency staff to develop ways to implement the solutions proposed in this paper.
2. Commission a study of how the agencies currently use best-value contracting.
3. Create an ombudsman in the federal land management agencies that anyone may approach to report potential labor law problems. Gather feedback from key stakeholders when hiring staff to act as ombudsman.

² *A Survey of Innovative Contracting for Quality Jobs and Ecosystem Management*, USDA Forest Service Pacific Northwest Research Station, PNW-GTR-552.

workers, land management is becoming more complex, and the rural workforce capacity is diminishing, the need for contract worker training is increasingly important. Where training needs exist, best value contracting should be used to reward contractors that provide training to their workers as part of the contract. In addition, agreements authorities that include partnerships with federal land management agencies, local non-profit organizations, local contractors, and community colleges can be used to combine practical, hands-on worker training. There are examples of such partnerships within the Northwest Forest Plan region.³

2. Awarding Contracts

• Best Value Contracting

Although the vast majority of contracts are awarded on a best value basis, too often price is the most important (and sometimes only) criterion for bid award. This rewards contractors who are willing to ‘cut corners’ instead of those who perform quality work and provide quality jobs. The Forest Service and other federal land management agencies should make better use of the opportunities provided by best value contracting to reward contractors who perform high quality work, treat their workers properly, and provide worker training. The agencies should also develop a system that allows them to track the ways in which best value contracting is used, and the impacts of that use.

• Contract Price and the Government Estimate

To hit acreage targets while adhering to tight budget constraints, the Forest Service and other land management agencies have strong incentives to accept the lowest priced bid. However, when land management agencies accept bids that are offered well below the government estimate of the cost of performing the work, workers can be shortchanged, perhaps illegally. To address this problem, we recommend that the land management agencies use the government estimate as a tool to disqualify bids that are lower than 20% below that estimate.

3. Creating Accountability

• Labor Law Enforcement

Numerous laws such as the Service Contract Act are in place to protect forest workers from exploitation (see list in definitions section) but are ill-enforced, a situation further exacerbated in remote worksites. Contracting officer’s representatives and inspectors who already visit these sites

should be tasked with recording worker-days and other information. When activities show a discrepancy between worker days and bid award, an investigation of wages should follow, with the help of the Department of Labor. For this system to be effective, field staff should be given clear guidance and training to ensure that they understand their roles, responsibilities, and obligations.

• Certified Payroll

The Davis-Bacon Act has an effective, efficient payroll certification system that places limited burdens on contractors while creating quality information about compliance. This Act requires that contractors regularly file certified payroll with state labor departments, which provides clear, consistent information to settle wage complaints or undertake enforcement actions. A similar system to track wages under the Service Contract Act should be adopted to increase compliance to the benefit of workers, contractors, and the federal government.

• Performance Measures

High acreage targets often create strong incentives for the land management agencies to not only treat the cheapest acres but to award contracts to the lowest price contractors without regard for the quality of their work or worker treatment. This harms workers, contractors, and our nation’s natural resources.

To reduce the pressure to accept below cost bids, and increase the incentives for agencies to investigate potential labor law violations, we recommend that the Forest Service and other federal land management agencies establish performance measures that track progress towards creating high quality and sustained jobs. Performance measures might include:

- Number and percentage of contracts that include non-monetary evaluation criteria and those criteria that are equal or more important than price;
- Number and percentage of contracts that were not awarded to the lowest price offer;
- Number and percentage of contracts that include structured training of workers; and
- Number of times that a land management agency partnered with the Department of Labor or other relevant state and federal agencies to investigate and address suspected labor law violations.

4. Building a New System

• Worker and Contractor Participation

³Improving Jobs, Community and the Environment: Lessons from the Ecosystem Workforce Project, Labor Education Research Center, University of Oregon, 1998.

Forest workers and small businesses and contractors have enormous experience and understanding about how the federal contracting system affects them and the quality of their restoration work. We recommend incorporating contractors, workers, worker organizations, and community-based forestry groups into discussions about how to improve the federal forest contracting system. In particular, we recommend that Forest Service senior leadership sponsor a series of meetings between workers, contractors, rural community organizations, contracting officers, and other relevant federal staff to develop concrete ways to implement changes in the procurement systems such as those proposed in this briefing paper.

- *Ombudsman*

Currently, it is difficult for all interested people to report suspected labor law violations. Workers risk retaliation, contractors must make formal complaints, and general citizens who suspect problems lack clear venues for expressing concerns. The federal land management agencies should create an ombudsman who can hear concerns from workers, contractors, citizens, and agency staff, and then investigate problems and facilitate action when problems arise. When hiring the ombudsman, the agency should consult key stakeholders to ensure that candidates will meet constituent needs.

- *Best Value Contracting Practices*

When making awards based on best value, there is currently considerable controversy about the frequency with which the agency weights factors other than price. We recommend that the Forest Service or Congress commission a study about how the agency uses best value contracting.

DEFINITIONS AND LAWS

A “*quality job*” in forest restoration is one that:

- Pays family-supporting wages and health benefits
- Lasts multiple seasons and years
- Has opportunity for advancement (a career path)
- Includes a safe and healthy workplace
- Provides skill training and rewards trained workers
- Allows people to work near where they live as much as possible

Service Contract Act (SCA) requires that contractors working on federal contracts pay their workers prevailing wages for service activities such as tree planting, thinning, brushing, and data collection. Contractors must also provide payments in lieu of benefits, paid holidays, and paid vacation.

Davis-Bacon Act requires that contractors working on federal construction contracts pay their workers prevailing wages. Contractors must also provide payments in lieu of benefits, paid holidays, and paid vacation. Employers are required to submit certified payroll that documents the wages that they paid.

Contract Work Hours and Safety Standards Act (CWHSA) requires that workers be paid time and a half whenever they work more than 40 hours per week when working on a federal contract, among other provisions.

Migrant and Seasonal Agricultural Workers Protection Act (MSPA) requires that employers provide seasonal agricultural and forest workers with information about legal entitlements, detailed accounting of their pay, transportation in safe, insured vehicles and other items. A 1984 court case ruled that this law applies to forest workers such as those who perform activities including tree planting and hand thinning in addition to traditional agricultural workers.

Occupational Safety and Health Act (OSHA) is designed to create safe, healthy workplaces for all workers.

WHO WE ARE

The Rural Voices for Conservation Coalition is comprised of western rural and local, regional, and national organizations that have joined together to promote balanced conservation-based approaches to the ecological and economic problems facing the West. We are committed to finding and promoting solutions through collaborative, place-based work that recognizes the inextricable link between the long-term health of the land and well being of rural communities. We come from California, Oregon, Washington, Idaho, New Mexico, and Montana.

FOR MORE INFORMATION

Cassandra Moseley
Ecosystem Workforce Program, University of Oregon
541-346-4545
cmoseley@uoregon.edu

Lynn Jungwirth
Watershed Research and Training Center
530-628-4206
lynnj@hayfork.net

CeCe Headley
Alliance of Forest Workers and Harvesters
530-629-3353
alliancefwh@pcweb.net

Learn more about the Rural Voices for Conservation Coalition:
503-221-6911
issue@sustainablenorthwest.org

www.sustainablenorthwest.org/programs/policy.php